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State v. Hankston Respondent's Brief Dckt. 43878

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43878
Plaintiff-Respondent,)	
)	Bonneville County Case No.
v.)	CR-2014-1899
)	
DEANGELO LAMAR HANKSTON,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Hankston failed to establish that the district court abused its discretion by imposing a unified sentence of 10 years, with two years fixed, upon his guilty plea to possession of Oxycodone with the intent to deliver?

Hankston Has Failed To Establish That The District Court Abused Its Sentencing Discretion

The state charged Hankston with possession of Oxycodone with the intent to deliver and possession of Hydrocodone with the intent to deliver, with an enhancement for being a second or subsequent drug offense. (R., pp.142-44.) Pursuant to a plea

agreement, Hankston pled guilty to possession of Oxycodone with the intent to deliver and the state dismissed the remaining charge and enhancement, and agreed to recommend no more than three years for the fixed portion of Hankston's sentence. (R., pp.180-83, 185-86.) The district court imposed a unified sentence of 10 years, with two years fixed. (R., pp.199-202.) Hankston filed a notice of appeal timely from the judgment of conviction. (R., pp.210-13.)

Hankston asserts his sentence is excessive in light of his family support and purported remorse. (Appellant's brief, pp.3-5.) The record supports the sentence imposed.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

The maximum prison sentence for possession of Oxycodone with the intent to deliver is life in prison. I.C. § 37-2732(a)(1)(A). The district court imposed a unified sentence of 10 years, with two years fixed, which falls well within the statutory guidelines. (R., pp.199-202.) At sentencing, the state addressed Hankston's ongoing criminal offending and disregard for the law, his failure to accept full responsibility for his criminal conduct, the risk he presents to society, and his failure to rehabilitate or be deterred. (11/18/15 Tr., p.12, L.20 – p.17, L.10.) The district court subsequently articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Hankston's sentence. (11/18/15 Tr., p.18, L.13 – p.20, L.17.) The state submits that Hankston has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpts of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm Hankston's conviction and sentence.

DATED this 3rd day of August, 2016.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 3rd day of August, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

ELIZABETH ANN ALLRED
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

1 so he could gather enough funds to pay to get back up
2 here and so forth.

3 We appreciate the Court and the State allowing us
4 to do this. But he has made himself available almost
5 every time, coming up from Las Vegas, taking
6 responsibility for this, and I hope the Court would
7 count that in his favor.

8 He does have good support. He now is residing
9 with his mother as the presentence report indicated. I
10 think she's much more of a -- and as I've read through
11 that, it appears that Mr. Hankston does not say, "Woe is
12 me. I've had this horrible childhood and that's what
13 led me to the life of crime."

14 He did have a fairly normal childhood, grew up in
15 Las Vegas with his mom and step-dad. But now he's
16 residing with his mother where there's some more
17 support, where I think being with her will help Deangelo
18 maintain and comply with any conditions that are placed
19 on him.

20 (Defendant and counsel confer.)

21 MR. MALLARD: He's also a single parent,
22 Your Honor. He has two children, one five and three.
23 He has custody of the five-year-old, for the Court's
24 information also.

25 But as part of this, Your Honor, his cooperation

11

1 factor, he did waive the prelim. There's never been any
2 real objection or pushback from Mr. Hankston, with the
3 exception of the one plea agreement where the State
4 wanted him to testify against his codefendants. But,
5 again, he's here. He's made himself available for his
6 punishment, Your Honor.

7 Thank you.

8 THE COURT: One thing I wanted to get corrected
9 here. In the presentence report on page 4, in the first
10 line of the official version, it says "on February 18,
11 2015," and I think by the Court's record it was
12 February 18, 2014?

13 MR. MALLARD: It is.

14 MS. SHAUL: That is correct, Your Honor.

15 MR. MALLARD: Sorry I didn't catch that.

16 THE COURT: That this stop took place so -- all
17 right.

18 Ms. Shaul, what's the State's recommendation?

19 MS. SHAUL: Thank you, Your Honor.

20 In this particular case we had a plea agreement
21 wherein, we, on behalf of the State, agreed to recommend
22 no more than three fixed and be free to argue as to the
23 indeterminate portion of sentence here.

24 So in accord with the plea agreement, I am making
25 the following recommendation. I'm asking that the Court

12

1 impose a term of three years fixed in this case and an
2 indeterminate portion of ten years.

3 Your Honor, this is the defendant's fifth felony
4 conviction. He has served over five years of
5 penitentiary time, with most of that being served
6 federally. His record, when you look at it, shows an
7 ongoing pattern of criminal conduct, most of which
8 involves some element of drugs being involved in the
9 crimes that he's committing.

10 When you look at the 2003 conviction, the charges
11 to which the defendant -- or charges the defendant was
12 charged with: Felon in possession of a firearm, stolen
13 property, and conspiracy to violate the Uniform
14 Controlled Substances Act.

15 And you go to November of 2003: Obstructing a
16 peace officer and trafficking in controlled substances.
17 Then there is the possession of cocaine with intent to
18 sell. That charge, in -- I believe that one's out of
19 Clark County as well. And then you have possession of a
20 firearm, where he goes and does federal time.

21 Then there's another charge in 2009 that deals
22 with possession of a drug not introduced into commerce.
23 It looks like on that one he got rehab and drug
24 counseling, and that's a misdemeanor.

25 But, again, what I'm seeing when I look at this

13

1 record is someone who just continually goes back to the
2 same kind of unlawful substance-abuse-related or
3 substance-abuse-involved crimes, shows a pattern of
4 dealing in drugs, so we aren't talking only about
5 substance abuse problems, per se.

6 And, frankly, when you read the presentence
7 investigation, and Mr. Hankston says he doesn't even
8 think he has a problem with drugs -- now, he was, of
9 course, evaluated to require intensive outpatient
10 treatment, level 2.1, intensive outpatient treatment --
11 but he himself thinks he doesn't have a drug problem.

12 I think the point here is that what we see is
13 that this is an individual who presents with much more
14 being criminally minded or having a criminality issue
15 that takes precedence over any substance abuse issue,
16 even by his own statement.

17 He's not accepting responsibility in any real
18 sense of the word. I think he's still maintaining he
19 wasn't aware of the pills that were in the car, and it
20 looks like there were 4058 pills in that vehicle that
21 was running up to Spokane.

22 The reason he gave the presentence investigator
23 for pleading guilty was just he was just sick and tired
24 of having to drive back and forth to Idaho and
25 maintained he didn't know what was going on until,

14

1 finally, he admitted to the presentence investigator
2 that, in fact, he was paid \$4500 to drive -- be part of
3 the driving team -- or to drive these people up, and
4 that he knew when he was paid that money that, in fact,
5 it involved illegal criminal conduct by his own
6 statement.

7 Mr. Mallard indicated some statements about what
8 would have occurred had we gone to trial with this
9 person who was in protective custody. I believe the
10 testimony would have been that, while this defendant was
11 not the biggest player involved moving all of these
12 pills, he was certainly a player. He was certainly
13 involved. That frequently he was receiving money
14 relating to these pills, and the pills that were being
15 run up, back and forth -- back up to Washington.

16 And the information we have is that the street
17 value of the pills that were found in the vehicle that
18 Mr. Hankston was involved with -- the vehicle he was
19 driving, or that he was in the car -- those pills are
20 valued at \$10 apiece, and we have 4050 pills, which
21 means the street value of the drugs that he was
22 assisting in running up to Spokane totaled approximately
23 \$40,500. That's significant and substantial.

24 And you can understand why someone who does a
25 temporary job, maybe works one day a week, would be

15

1 making those choices if he doesn't want to work more
2 than one day a week or to find full-time employment.

3 Mr. Hankston has shown that he can do probation
4 and has been able to do probation, and I think the
5 presentence investigator even acknowledges that
6 Mr. Hankston is -- was able to successfully complete
7 parole for approximately a period of three and a half
8 years; that he would be amenable to supervision.

9 However, I think what balances against that and
10 weighs in the State's favor in terms of the
11 recommendation we have made is that his record shows
12 that over and over again, Mr. Hankston completely
13 disregards the standards and laws that society imposes
14 on him and everybody else, and that is "You don't sell
15 drugs. You don't help other people sell drugs. You
16 don't do those things. And when you do them, you get
17 caught, and you go to prison for it when you won't stop
18 doing that."

19 He doesn't present to you with one felony. He
20 doesn't present to you with two. This is his fifth
21 felony. And, as I noted before, most of his criminal
22 activity involves some element of being involved with
23 drugs. He has a lack of accountability that he's shown.
24 He's shown he's learned very little from the legal
25 interventions that he's already been involved in. And

16

1 given that history is our best predictor of the future
2 for Mr. Hankston, he's going to do this again unless you
3 pull him up to short now and put him in prison, because
4 he won't live in the community without going back to
5 that behavior.

6 He can get the treatment and the structure that
7 he needs while incarcerated in the penitentiary. That's
8 the best place for him to be to protect the community
9 from further kinds of behavior that he's already
10 exhibited he'll do, and he'll do, and he'll do it again.

11 Thank you.

12 THE COURT: Mr. Hankston, do you wish to make any
13 statement on your own behalf or give me any additional
14 information in mitigation before I impose sentence?

15 THE DEFENDANT: Yes, Your Honor. I know I did
16 messed up a lot of times, and I accept responsibility.
17 I was in the truck at the wrong time. That's true too.
18 But I'm not a bad person -- okay -- you can't say. I
19 take responsibility. I work now. I raise my son. I
20 haven't been in no trouble. I haven't did nothing.

21 I don't do no drugs, and I know I have a prior
22 record, which is, you know, I was young. I'm not going
23 to sit here and say that I was young and dumb at the
24 time, but I have learned, and I do accept
25 responsibility. I'm not asking you to do me no favors,

17

1 sir. Nothing.

2 I just ask you to just take consideration that I
3 got a family. They love me. I got support. And I did
4 wrong, and I accept it.

5 That's it, Your Honor.

6 THE COURT: All right. Thank you.

7 Are you fully satisfied with the representation
8 that Mr. Mallard has provided?

9 THE DEFENDANT: Yes, I am.

10 THE COURT: Do you know of any legal reason why I
11 should not sentence you today?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: Well, Mr. Hankston we've been dealing
14 with this case a long time, and Mr. Mallard correctly
15 points out that you've been good about coming back to
16 Idaho from Las Vegas, and we've given you the
17 opportunity to do that without putting you in jail or
18 keeping you here.

19 We had a little trouble getting to this hearing,
20 but there have been a number of circumstances which have
21 given rise to those delays, and all of them I've
22 approved.

23 The problem is today we're facing the music, and
24 you are charged here with a very serious crime, a crime
25 that could put you in prison for the rest of your life.

18

1 And you are -- you present yourself as having been
2 involved with this criminal activity -- and, frankly, I
3 don't accept the level of naivete that you try to
4 present.

5 I think you knew a whole heck of a lot more about
6 what was going on than you are letting on, but that's
7 just my perception of what I have put together from
8 reading through the file carefully.

9 This -- you may not have been the main mover and
10 shaker here, but you were engaged in a criminal
11 activity. There's no question about that. You admitted
12 that. And it came within six months of you being
13 released from federal supervision for a similar crime,
14 and having been in prison on that crime, and having been
15 in prison for.

16 One would think that having gone through that,
17 you would be a little more circumspect about who you're
18 associating with, and what they're doing, and what
19 you're doing in relation to. When you're engaged in --
20 on the interstate over long trips with people who paid a
21 lot of money for it, and they've got a carful of drugs,
22 you've got a problem. And you're not facing the
23 realities of your life.

24 So based upon that, I think there's some good
25 cause for the recommendations that are made. Based upon

19

1 your plea of guilty, it is the judgment of the Court
2 that you are guilty of the crime of possession of
3 oxycodone with intent to deliver. In addition to the
4 Presentence Investigation Report, I have reviewed the
5 objectives of criminal punishment adopted by the Idaho
6 Supreme Court. In your case they're all important.

7 My prime duty is to protect society from this
8 type of criminal activity. I must deter you if I can.
9 I must see to your rehabilitation if I can. And I must
10 impose an element of punishment.

11 I have also reviewed and considered the criteria
12 set forth in Idaho Code Section 19-2521 relative to
13 whether I place you on probation or send you to prison.

14 Based upon all of the circumstance of the case,
15 it is the judgment of the Court that you be sentenced to
16 the custody of Idaho Board of Correction for a minimum
17 period of two and a maximum period of ten years.

18 I shall impose a fine of \$1000; order restitution
19 in the amount of \$1047.67. That may be joint and
20 several with other defendants if they are charged and
21 levied with that restitution.

22 Are you a public defender here, Mr. Mallard?

23 MR. MALLARD: I am not.

24 THE COURT: All right.

25 Court costs will be \$205.50; \$75 to the Victims

20

1 Relief Fund.

2 You will provide a DNA and thumbprint exemplar.
3 You'll pay the statutory fee for that.

4 And if required by the Department of Correction,
5 you will be required to pay up to \$100 for preparation
6 of the Presentence Sentence Report.

7 Now, do you have any question about that
8 sentence?

9 MR. MALLARD: Your Honor, he had a question. I
10 couldn't quite hear him.

11 THE COURT: All right.

12 (Defendant and counsel confer.)

13 THE CLERK: So that's two plus eight for a total
14 of ten?

15 THE COURT: Yes. Two plus eight.

16 THE CLERK: Okay. Just wanted to make --
17 everybody is a little bit different.

18 MR. MALLARD: Do you have any questions about the
19 sentence?

20 THE DEFENDANT: No, sir.

21 MR. MALLARD: He said no, he doesn't have any
22 questions.

23 THE COURT: You are advised that you have the
24 right to appeal to the Idaho Supreme Court from this
25 judgment.

21

1 You have the right to be represented by an
2 attorney on that appeal.

3 If you can't afford an attorney, one will be
4 appointed to assist you at public expense, but you only
5 have 42 days from today's date to file any notice of
6 appeal.

7 You also may have up to 120 days under Rule 35 to
8 ask for some relief if you wish, but you must file that
9 request within 120 days.

10 You may have up to a year under the Uniform
11 Post-Conviction Relief Act if you qualify to ask for
12 some relief, but you must do that within one year.

13 You are hereby remanded to the custody the
14 Sheriff of Bonnaville County for delivery to the proper
15 agent of the Idaho Department of Correction and
16 execution of sentence.

17 Anything else at this time, Mr. Mallard?

18 MR. MALLARD: No, Your Honor.

19 THE CLERK: Your Honor, how about the 2014-1884
20 case?

21 THE COURT: I think --

22 THE CLERK: It shows on ISTARs that it's assigned
23 to Judge Clark, I believe, but it's listed here, so I
24 was --

25 THE COURT: Well, before we finish here, there's

22